

Message Text

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ACTION EUR-12

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TO SECSTATE WASHDC IMMEDIATE 8190

INFO AMCONSUL CALGARY POUCH

C O N F I D E N T I A L SECTION 01 OF 02 OTTAWA 03720

PASS DOE FOR BERGOLD AND GOLDMAN, AND DOE/FERC FOR SMITH
AND ADGER

STATE FOR EUR/CAN AND EB (BOSWORTH)

E.O. 11652: GDS

TAGS: ENRG, CA

SUBJECT: FOOTHILLS' PIPE PROCUREMENT PLAN

REF: OTTAWA 3718

FOLLOWING IS TEXT OF DISCUSSION PAPER LEFT WITH NORTHERN
PIPELINE AGENCY OFFICIALS AT CONCLUSION OF JULY 25 MEETING
REPORTED REFTEL:

"PIPE PROCUREMENT FOR THE NORTHERN GAS PIPELINE

"1. PARAGRAPH 7 OF THE AGREEMENT ON PRINCIPLES APPLICABLE
TO A NORTHERN NATURAL GAS PIPELINE REQUIRES EACH GOVERN-
MENT TO 'ENDEAVOR TO ENSURE THAT THE SUPPLY OF GOODS AND
SERVICES TO THE PIPELINE WILL BE ON GENERALLY COMPETITIVE
TERMS,' TAKING INTO ACCOUNT PRICE, RELIABILITY, SERVICING
CAPACITY, AND DELIVERY SCHEDULES.

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"2. IN ACCORDANCE WITH THIS PROVISION, POTENTIAL U.S. AND
CANADIAN SUPPLIERS WHO COULD BE COMPETITIVE UNDER THE
TERMS OF THE AGREEMENT SHOULD NOT BE ARBITRARILY EXCLUDED
FROM BIDDING ON AND PROVIDING GOODS AND SERVICES FOR BOTH
THE CANADIAN AND U.S. PORTIONS OF THE PROJECT.

"3. IN THE FINAL ANALYSIS THE ENTIRE PROJECT WILL BE PAID FOR BY U.S. CONSUMERS THROUGH THE PRICE THEY PAY FOR DELIVERED GAS. A PROCESS WHICH ENSURES COMPETITIVE TERMS IS NEEDED BOTH FOR THE EFFECT IT CAN HAVE IN HELPING HOLD COSTS DOWN, AND IN ORDER TO DEMONSTRATE TO U.S. CONSUMERS AND THEIR REPRESENTATIVES THAT COSTS ARE AS LOW AS PRUDENTLY POSSIBLE. THE FERC WILL BE ASKED TO APPROVE TRANSPORTATION CHARGES BASED ON THE CONSTRUCTION COSTS, AND WILL HAVE TO BE ASSURED THAT "GENERALLY COMPETITIVE TERMS" HAVE BEEN FULFILLED.

"4. IT IS DIFFICULT TO SEE HOW FOOTHILLS' PIPE PROCUREMENT PLAN AS OUTLINED IN MR. BLAIR'S JULY 11 LETTER COULD BE CONSISTENT WITH THE UNDERTAKINGS OF PARAGRAPH 7.

"(A) THE FOOTHILLS' PROPOSAL WOULD APPEAR TO PUT LIMITATIONS ON U.S. FIRMS BIDDING FOR PIPE SIZES PRODUCED IN THE UNITED STATES AS WELL AS ON POTENTIAL OFFSHORE SUPPLIERS. WHILE THE PROPOSAL SEEMS TO CONTEMPLATE THAT U.S. FIRMS MIGHT PROVIDE SOME PIPE, ITS PHRASEOLOGY RAISES QUESTIONS ABOUT EVENTUAL CRITERIA FOR DETERMINING THEIR ELIGIBILITY. THE PROPOSAL LEAVES FOOTHILLS VERY BROAD DISCRETION IN DECIDING WHETHER TO CONSIDER SUBMISSIONS BY OFFSHORE SUPPLIERS. WHY SHOULD NOT BID DOCUMENTS BE MADE AVAILABLE TO ALL COMPANIES WHO EXPRESS AN INTEREST? WHAT WOULD BE INVOLVED IN BECOMING AN 'APPROVED NORTH AMERICAN SUPPLIER'?
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WHAT WOULD BE INVOLVED IN THE 'TECHNICAL AND COMMERCIAL EVALUATIONS' INTENDED TO BE CONDUCTED FOR THE U.S. MILLS CONSIDERED TO BE CANDIDATES FOR APPROVAL?

"(B) THE PROPOSAL WOULD INTRODUCE NON-COMPETITIVE CRITERIA--'NATIONAL PROCURING AND SUBSIDIZING POLICIES' AND 'A NEED TO INSURE CONTINUITY OF FUTURE SUPPLY FROM THE CANADIAN PIPE VENDORS'--IN EVALUATING BIDS. WHAT DO THESE PHRASES MEAN?

"(C) THE PROPOSAL PREDETERMINES THAT ONLY CANADIAN SUPPLIERS WOULD BE CONSIDERED FOR 56-INCH PIPE WITHOUT PERMITTING COMPETITIVE OFFSHORE PRODUCERS TO BID. CLEARLY CANADIAN FIRMS ARE LIKELY SUPPLIERS FOR 56-INCH PIPE IN VIEW OF THEIR LOCATION ADVANTAGE AND THE DEPRECIATION OF THE CANADIAN DOLLAR RELATIVE TO THE YEN AND OTHER CURRENCIES. HOWEVER, PREDETERMINATION COULD RESULT IN A SUBSTANTIALLY DIFFERENT SUPPLY PRICE THAN A COMPETITIVE PROCESS. IF STELCO AND IPSCO WERE DEEMED TO BE THE ONLY APPROVED SUPPLIERS OF 56-INCH PIPE, HOW ARE WE TO BE ASSURED THAT THE PRICE OF THE PIPE IS 'GENERALLY COMPETITIVE'?

"5. DEPUTY PRIME MINISTER MACEACHEN'S JULY 13 LETTER TO MR. BLAIR MENTIONS SUBMISSION TO THE ADMINISTRATOR OF THE NORTHERN PIPELINE AGENCY FOR PRIOR APPROVAL BID DOCUMENTS AND A BIDDERS LIST FOR THE MAINLINE PIPE. COULD U.S. AUTHORITIES NOT REVIEW THE BID DOCUMENTS AND BIDDERS LIST AT THE SAME TIME, PRIOR TO FOOTHILLS SENDING THEM OUT, TO SEE WHETHER OR NOT THEY CONTAINED ADEQUATE SPECIFICATIONS TO ENSURE 'GENERALLY COMPETITIVE TERMS'? SOME SUCH PRIOR REVIEW WOULD SEEM TO BE WITHIN THE SPIRIT OF PARAGRAPH 7; IMPLEMENTATION OF THE PARAGRAPH IN CANADA WOULD, OF COURSE, REMAIN THE RESPONSIBILITY OF THE CANADIAN GOVERNMENT ALONE.

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"6. WITH REGARD TO AVAILABILITY OF INFORMATION ON PURCHAS-
ING PLANS FOR U.S. SECTIONS, THE FEDERAL INSPECTOR WILL BE
PRIMARILY RESPONSIBLE FOR INSURING COMPLIANCE WITH THE
AGREEMENT UNDER THE REORGANIZATION PLAN TO BE PRESENTED
TO THE CONGRESS SHORTLY. THE INSPECTOR WILL UNDOUBTEDLY
NEED TO ESTABLISH PROCEDURES FOR DETERMINING THAT THE
'GENERALLY COMPETITIVE TERMS' TEST IN PARAGRAPH 7 HAS BEEN
SATISFIED. BECAUSE OF THIS REQUIREMENT, AND BECAUSE OF
THE COMMISSION'S RESPONSIBILITIES TO ASSURE ADEQUATE PRO-
TECTION OF THE PUBLIC INTEREST IN SETTING PIPELINE RATES,
WE ARE CONFIDENT THAT FULLY SATISFACTORY ARRANGEMENTS FOR
FORWARDING PROCUREMENT INFORMATION TO CANADA, FOR DISSEMI-
NATION AS THE CANADIAN GOVERNMENT SEES FIT, CAN BE MADE.

"AS AN INTERIM MEASURE PENDING APPOINTMENT OF THE FEDERAL
INSPECTOR, SOME SETS OF SPECIFICATIONS FOR CERTAIN PIPE-

LINE COMPONENTS ARE BEING SUBMITTED TO THE APPROPRIATE U.S. GOVERNMENT REGULATORY AUTHORITIES FOR APPROVAL OF SAFETY ASPECTS. WE WOULD BE GLAD TO MAKE THE COMPANIES' SUBMISSIONS, ALONG WITH ANY U.S. GOVERNMENT AGENCY COMMENTS ON THOSE SUBMISSIONS, AVAILABLE TO ANYONE IN CANADA WHO WANTED TO SEE THEM. HENCEFORTH, THE FERC WILL INFORM THE NORTHERN CONFIDENTIAL

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PIPELINE AGENCY THROUGH THE U.S. EMBASSY IN OTTAWA OF ANY PROPOSED SPECIFICATIONS FOR PIPELINE COMPONENTS WHICH HAVE BEEN SUBMITTED TO GOVERNMENT APPROVAL, IN ORDER THAT NORTHERN PIPELINE AGENCY PERSONNEL CAN ASSESS FOR THEMSELVES WHETHER OR NOT ANY MATERIALS OR EQUIPMENT SPECIFICATIONS ARE UNNECESSARILY EXCLUSIONARY. THE FERC WILL BEGIN FORWARDING SUCH DOCUMENTS TO THE AGENCY AS SOON AS THEY BECOME AVAILABLE.

"7. IN VIEW OF THE PRECEDENTS WHICH WILL BE INVOLVED IN THE RESOLUTION OF THESE IMMEDIATE QUESTIONS AND IN KEEPING WITH PARAGRAPHS 7 AND 8 OF THE AGREEMENT, THE UNITED STATES GOVERNMENT BELIEVES THAT GOVERNMENT-TO-GOVERNMENT CONSULTATIONS ON MODALITIES TO IMPLEMENT PARAGRAPH 7 OF THE AGREEMENT SHOULD BE HELD AS SOON AS POSSIBLE, BEFORE EITHER THE UNITED STATES OR CANADA PROCEEDS WITH INITIAL PROCUREMENT PLANS FOR SUCH A MAJOR ITEM AS PIPE." DUEMLING

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